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Washington (Ter.) Laws, statutes, &c.

ELECTION LAW

OF THE

TERRITORY OF WASHINGTON,

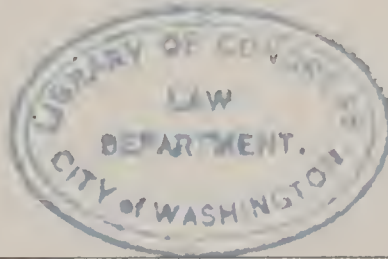
PASSED BY THE

LEGISLATIVE ASSEMBLY

AT ITS

THIRTEENTH REGULAR SESSION,

BEGUN AND HELD AT THE CITY OF OLYMPIA, THE SEAT OF
GOVERNMENT, ON MONDAY, DEC. 4, 1865.



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ELECTION LAW

OF THE

TERRITORY OF WASHINGTON.

AN ACT

RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES.

CHAPTER I.

QUALIFICATION OF ELECTORS, AND HEREIN OF RESIDENCE.

SEC. 1. White American citizens over twenty-one years.

American half-breeds holding donation claims, further qualifications.

White males who have declared intentions, &c., &c.

Further restriction of qualification.

Officers and men connected with army and navy excluded.

Proviso saving to citizens of Territory in service of the United States the elective franchise.

2. Employment in service of the U. S. does not affect residence.

Nor employment in navigation.

Nor while a student at academy or college.

Nor confinement in asylum, county jail, &c.

Conviction of infamous crime excepted.

3. Idiots, insane and what convicts disfranchised.

4. Absence from Territory on certain business does not affect residence.

5. Conviction of infamous crime construed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That all white American citizens

above the age of twenty-one years, and all American half-breeds over that age, who hold land under the donation law and who can read and write and have adopted the habits of the whites, and all other white males, inhabitants of this Territory, above that age, who shall have declared on oath their intention to become citizens and to support the Constitution of the United States, at least six months previous to the day of election, and who shall have resided six months in the Territory and thirty days in the county next preceding the day of election, and who have not borne arms against the United States of America, or given aid and comfort to its enemies, and none other shall be entitled to hold office or vote at any election in this Territory: *Provided*, That no officer, soldier, seaman or marine, in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote at any election in this Territory; but this provision shall not apply to citizens of the Territory who may be attached to the service of the United States, either as officers or soldiers, seamen or marines, and shall be in the Territory at the time of election.

SEC. 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this Territory, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum; nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime.

SEC. 3. No idiot or insane person or persons convicted of an infamous crime shall be entitled to the privileges of an elector.

SEC. 4. Absence from the Territory on business of the Territory, or of the United States, shall not affect the question of residence of any person.

SEC. 5. A crime shall be deemed infamous which is punishable by death or by imprisonment in the penitentiary.

CHAPTER II.

REGISTERING VOTES.

- SEC. 1. Assessor to make list of legal voters, when.
What assessment list shall contain.
One list to be posted, one filed with Secretary of Territory.
2. Duty of assessor in correcting such list, and herein of extra assessment.
As to parties between 21 and 22 years of age.
Saving clause for classes hereinbefore designated.
3. Penalty of county assessor refusing to assess legal voters.

SEC. 1. The county assessors of the respective counties, instead of the time named in an act entitled "an act to amend an act entitled an act to provide for the assessing and collecting Territorial and county revenue," approved January 21st, 1865, shall, on or before the twentieth day of April, of every year, make, or cause to be made, alphabetical lists of the legal voters in each precinct, noting those who shall have paid their poll-tax, and also those who may be exempt by reason of being over fifty years of age, which alphabetical lists shall be posted in each precinct at least twenty days before the election, and one copy of which shall be transmitted to the Secretary of the Territory, and be by him filed as the census of legal voters which county assessors are annually required by law to make.

SEC. 2. County assessors, or those performing such duties under the law, shall attend at the office of the county auditor the week terminating twenty days before the election, for the purpose of correcting such assessment lists and adding thereto any names of legal voters who, from any cause, have been omitted therefrom, and the said extra assessment list alphabetically arranged shall be posted in like manner with the assessment list, and no person shall be allowed to vote in any precinct except such persons as are borne upon one or the other of said assessment lists, or those who may be between twenty-one and twenty-two years of age, who shall be allowed to vote without paying poll-tax, if the judges are satisfied that they are in all other respects entitled to the elective franchise: *Provided*, That

the foregoing section shall not be so construed as to exclude from voting certain classes designated and described in section two, chapter one, or persons engaged in the navigation of the waters of this Territory, or of the United States, or of the high seas.

SEC. 3. Any county assessor willfully failing to comply with the provisions of this act by omitting to assess, or by presenting names not entitled to vote, shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars nor less than fifty dollars.

CHAPTER III.

TIME OF HOLDING, AND MANNER OF CONDUCTING ELECTIONS.

SEC. 1. Annual election on first Monday of June.

2. Special elections may be held.

3. What vacancies to be supplied at general election.

4. The Governor to issue proclamation of election when officer is voted for by Territory at large.

5. County auditors of senior counties to issue notice in joint districts.

6. Notice by county auditor of general or special elections.
Form of notice.

SEC. 1. A general election shall be held in the several election precincts in this Territory, on the first Monday of June in each year, at which there shall be chosen all such officers as are by law entitled to be elected in such year, unless otherwise provided for.

SEC. 2. Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the Territory, or any district, county or township, and may be held at such time as may be designated by the proper officer.

SEC. 3. All vacancies which are about to occur in an office, by the expiration of the full term thereof, shall be supplied at the general election.

SEC. 4. It shall be the duty of the Governor, at least sixty days before any general election, to issue his proclamation des-

ignating the offices to be filled by the Territory at large at such election, and to transmit a copy thereof to the county auditor of each county.

SEC. 5. It shall be the duty of the county auditors of the senior counties, in any joint council or representative district, to issue to the county or counties composing said district, thirty days before any general election, notice designating the offices to be filled at each election by said district.

SEC. 6. It shall be the duty of the county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting, or causing to be posted up at each place of holding election in the county a written notice thereof, said notice to be, as nearly as circumstances will admit, as follows :

“Notice is hereby given, that on the first Monday, the — day of — next, at — in the — district or precinct of — in the county of — an election will be held for Territorial, county, town or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning and will continue until six o'clock in the afternoon of the same day.

Dated this — day of — A. D., 18—.

A. B., County Auditor.”

CHAPTER IV.

OF RESIGNATIONS AND VACANCIES, AND SUPPLYING VACANCIES.

SEC. 1. What officers to resign to Governor.

What officers to resign to county commissioners.

All appointees, to the power making appointment.

2. Contingencies creating vacancies.

3. Governor to fill vacancy in office elected by Legislative Assembly.

4. Governor may order special election.

County auditor to give notice of special election.

5. Special elections to fill vacancies in county or precinct office.

6. Officer filling vacancy only serves out unexpired term.

SEC. 1. Resignations shall be made as follows :

By the Territorial officers, members of the Legislative Assembly, and by all other officers elected by the Legislature, to the Governor.

By all county officers, to the county commissioners of their respective counties.

By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

VACANCIES.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such officer:

1. The death of the incumbent.
2. His resignation.
3. His removal.
4. His ceasing to be an inhabitant of the district, county, town or village, for which he shall have been elected or appointed, or within which the duties of his office are to be discharged.
5. His conviction of an infamous crime, or of any offense involving a violation of his official oath.
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law.
7. The decision of a competent tribunal declaring void his election or appointment.
8. Whenever a judgment shall be obtained against such officer for a breach of the condition of his official bond.

SUPPLYING VACANCIES.

SEC. 3. Whenever a vacancy shall occur, during the recess of the Legislature, in any office which the Legislature is authorized to fill by election, the Governor of the Territory, until it is otherwise specially provided, may appoint some suitable person to perform the duties of such office, until the Legislature shall meet and elect some person to fill such office.

SEC. 4. Whenever a special election is necessary to fill a

vacancy in the office of delegate to Congress, Territorial council, house of representatives, or prosecuting attorney, the Governor shall issue his proclamation ordering such election, in like manner as is provided in regard to general elections, and designating also the time at which it is to be held; and the county auditor of each county in which such election is to be held, shall give notice thereof, as required in section six, chapter three of this act.

SEC. 5. Whenever a special election is necessary to fill a vacancy in any county or precinct office, the board of county commissioners shall instruct the county auditor to issue an order for such election, designating the office or offices to be filled, and the time of holding the election, and shall publish the same in the manner required by section six, chapter three, of this act.

SEC. 6. Whenever any officer resigns his office before the expiration of his term, or the office becomes vacant from any other cause, and at a subsequent or special election such vacancy is filled, the person so elected to fill such vacancy, shall not hold the office any longer than the original incumbent who resigned would have been entitled to hold the office.

CHAPTER V.

PLACES OF HOLDING ELECTIONS—INSPECTORS, JUDGES AND CLERKS OF ELECTION.

SEC. 1. Precincts and places to hold elections to be fixed by county commissioners, when.

2. Inspector and judges of election to be appointed by county commissioners, when.

When voters of precinct may elect inspector and judges.

3. Inspector and judges to appoint two clerks.

4. Oath to be taken by inspector and judges.

5. Form of oath of inspector.

6. Form of oath of judge of election.

7. Form of oath of clerk.

8. County auditor to make copy of each of said oaths.

Oath to be certified by person administering same.

Oaths to be filed by county auditor with election returns.

SEC. 9. Inspector to be chairman of board.

He may administer all necessary oaths.

After polls opened, inspector may fill vacancy if judges or clerks refuse to serve.

SEC. 1. It shall be the duty of the county commissioners, at their regular session held previous to the day of holding the general election, to divide their respective counties into precincts, in such manner as they may deem most convenient for the population, and appoint a place for holding the elections therein.

SEC. 2. It shall be the duty of the county commissioners, at their regular session held previous to the day of holding the general election, to appoint for each precinct, from the qualified electors of said precinct, one inspector and two judges, who shall constitute a board of judges of election. In case said board be not appointed for any precinct by the board of county commissioners, as specified in this section, or those appointed in accordance with this section shall not be present at the place designated by the county commissioners in a precinct for holding the polls, at the hour to open the polls, the electors present may appoint a board of judges for such precinct.

SEC. 3. The inspector and judges for each precinct shall, before the time of opening the polls, appoint two suitable persons to act as clerks, who shall be qualified electors.

SEC. 4. The inspector, judges and clerks aforesaid shall, before entering upon the duties of their offices, severally take and subscribe the oath or affirmation hereinafter directed, which shall be administered to them by any person authorized to administer oaths; but if no such person be present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector.

SEC. 5. The following shall be the form of the oath or affirmation to be taken by each inspector:

"I, (A. B.,) do swear (or affirm,) that I will duly attend to the ensuing election during the continuance thereof as an inspector, and that I will not receive any ticket or vote from any person, other than such as I shall firmly believe to be, according to the

provisions of the laws of this Territory, entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay or refuse to receive any vote from any person who I shall believe to be entitled to vote as aforesaid; but that I will in all things truly, impartially and faithfully perform my duty therein, to the best of my judgment and abilities, and that I am not directly nor indirectly interested in any bet or wager on the result of this election.”

SEC. 6. The following shall be the oath or affirmation of each judge :

“ We, (A. B.,) do ——— that we will as judges duly attend the ensuing election during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent that any vote or ticket shall be received from any person, other than such as we firmly believe to be, according to the provisions of the laws of the Territory, entitled to vote at such election; and that we will make a true and perfect return of the said election, and will in all things truly, impartially and faithfully perform our duty respecting the same, to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election.”

SEC. 7. The following shall be the form of the oath or affirmation to be taken by the clerks, viz :

“ We, and each of us (A. B.,) do ——— that we will impartially and truly write down the name of each elector who shall vote at the ensuing election, which shall be given us in charge, and also the name of the county and precinct wherein such elector resides; and carefully and truly write down the number of votes that shall be given for each candidate at the election, as often as his name shall be read to us by the inspector thereof, and in all things truly and faithfully perform our duty respecting the same, to the best of our judgment and abilities; and that we are not directly nor indirectly interested in any bet or wager on the result of this election.”

SEC. 8. It shall be the duty of the county auditor to make out one copy of each of the said oaths or affirmations for each

election precinct, which shall be severally subscribed by the inspector, judges and clerks, and the said oaths or affirmations shall be certified under the hand of the person by whom they shall be administered, and the said oaths or affirmations shall be placed with the election returns to be returned to the county auditor.

SEC. 9. The inspector shall be chairman of the board, and after its organization, shall have power to administer all necessary oaths which may be required in the progress of the election. He shall also have power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks, after the polls shall have been opened.

CHAPTER VI.

OPENING OF THE POLLS—VOTING AND CHALLENGES.

- SEC. 1. Polls shall be opened at 9 A. M. and closed at 6 P. M.
 A recess of one hour may be taken.
 In sparsely settled precincts, polls may be opened later.
2. Proclamation to be made of polls being open.
 3. Auditor to furnish inspector with two poll books five days before election.
 4. Voting shall be by ballot.
 Description of ballot.
 Inspector to pronounce audibly name of voter.
 On receiving ballot, inspector to deposit it in ballot box.
 5. Each clerk to enter name of voter on respective poll list.
 6. Challenging of person offering to vote.
 Duty of inspector and judges to challenge suspected persons.
 7. Duty of board when party is challenged.
 Oath to be administered.
 Questions to be propounded to party challenged.
 8. Challenged party refusing to swear, vote to be rejected.
 If judges not satisfied, to reject vote.
 9. Further proceedings if challenged party insists.
 Additional oath to be administered.
 Oath of identity, where naturalization is produced.
 10. When party challenging fails to traverse, vote admitted.
 Refusal to take oath, however, vote to be rejected.

SEC. 11. When person is challenged, because convicted of infamous crime.

Absence of record, two witnesses may prove conviction. ...

12. On closing polls, proclamation to be made.

SEC. 1. At all elections the polls shall be opened at nine o'clock in the morning, and shall continue open until six o'clock in the evening, at which time the judges shall close the polls: *Provided*, That the judges of the election may take a recess of one hour at any time they may think proper during the day, before three o'clock in the afternoon: *And provided further*, That in sparsely settled precincts, whenever a sufficient number of qualified electors to constitute a board of election are not present at nine o'clock on the morning of the day of election, it shall be lawful to open the polls as soon thereafter as a sufficient number are present.

SEC. 2. That the board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud, at the place of voting, that the polls are now open.

SEC. 3. It shall be the duty of the auditors of the several counties to furnish the inspector of each election precinct with two poll books, at least five days before the time of holding the election.

SEC. 4. The voting shall be by ballot. The ballot shall be a paper ticket, containing the names of the persons for whom the electors intend to vote, and designating the office to which each person so named is intended by him to be chosen. Whenever any person offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objections to the qualification of such person as an elector, he shall receive his ballot, and in the presence of the judges put the same, without being opened or examined, into the ballot box.

SEC. 5. The name of each elector whose ballot has been thus received, shall be immediately entered by each clerk in the column of his poll list, headed "names of voters," numbering each name in the additional column as it is taken down, so that it may be seen at any time whether the two lists agree.

SEC. 6. Any person offering to vote, may be challenged as

unqualified by the inspector or either of the judges, or by any legal voter, and it shall in all cases be the duty of the inspector and each of the judges to challenge any person offering to vote, whom they shall know or suspect not to be duly qualified as an elector, or to have borne arms against the United States, or have given aid to its enemies.

SEC. 7. When any person offering to vote is challenged, it shall be the duty of the board of judges to declare to him the qualifications of an elector, and the inspector, or one of the judges, shall tender him the following oath:

“ You do swear or affirm, that you will truly and fully answer all the questions as shall be put to you, touching your place of residence and qualifications as an elector; and that you have never voluntarily borne arms against the United States since you have been a citizen thereof; that you have voluntarily given no aid, countenance, council or encouragement to persons engaged in armed hostilities thereto; that you have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that you have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto: *And you do further* —, That, to the best of your knowledge and ability, you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same; that you take this obligation freely, without any mental reservation or purpose of evasion, so help you God.”

The inspector, or one of the judges, shall then proceed to question the person challenged in relation to his name, his then place of residence, how long he has resided in the township and county, where his last place of residence was; also, as to his citizenship, and whether a native or naturalized citizen, and if the latter, when, where, in what court, or before what officer he was naturalized, and all such other questions as shall tend to test his qualifications as to citizenship and the right to vote.

SEC. 8. If any person shall refuse to take the aforesaid

oath when so tendered, or to answer any and all pertinent questions as to his qualifications, his vote shall be rejected; and if the board of judges are satisfied from his answers as aforesaid, that such person is not a legal voter, they shall reject his vote.

SEC. 9. If such person shall still insist that he is entitled to vote, and the board of judges find no cause to reject his vote under the preliminary examination, and the challenge shall not be withdrawn, he shall not be entitled to vote unless he takes the following oath, to be administered by the inspector or one of the judges, viz:

“You do swear (or affirm, as the case may be,) that you are a citizen of the United States, (or that you have declared your intention to become a citizen six months previous;) that you have resided in this Territory six months next preceding this election, and in this county thirty days, and that you have not voted this day.”

And in case the person offering to vote produces a certified transcript of the record of a court of competent jurisdiction admitting him to citizenship, or certificate of declaration of citizenship, duly attested by the clerk thereof, as evidence of his right to vote, and the person so producing the same is unknown to the board of judges, he shall make oath that he is the person therein named.

SEC. 10. If any person shall take the oath, as tendered to him by the inspector or judges, and no evidence is offered to traverse the same, by the officer or party challenging, he shall be admitted to vote; but if he shall refuse to take the oath or affirmation so tendered to him, his vote shall be rejected.

SEC. 11. If the vote of any person be challenged on the ground that he has been convicted of an infamous crime and shall remain unpardoned, or disfranchised by any court of competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction, and in the absence of any authenticated record of such fact, it may be competent for two disinterested witnesses, upon oath, to prove the same.

SEC. 12. When the polls are closed, proclamation thereof

shall be made at the place of voting, and no votes shall be afterwards received.

CHAPTER VII.

COUNTING AND RECEIVING THE VOTES—DECLARING THE RESULT OF ELECTIONS, AND CERTIFICATES OF ELECTIONS.

- SEC. 1. Judges to count votes on afternoon of election day.
 Ballot box not to be removed till votes are counted.
 The counting to be public.
 Method of counting, duty of clerks, &c.
 Counting shall not be adjourned till completed.
2. Two tickets folded together, both rejected.
 If more officers than to be elected voted for, all to be rejected.
 No ticket to be rejected for form, if the person voted for can be ascertained.
3. Certificate to be prepared, and what to contain.
 Election returns, how made up, and sent by inspector to county auditor.
4. Election returns to be delivered to county auditor, by whom.
 If by private hand, affidavit required, what affidavit shall contain.
 If sent by mail, duties of post master receiving it.
 Inspector to retain duplicate for at least six months.
5. Election returns not to be rejected for want of form, &c.
6. County auditor to canvass returns on tenth day.
 What statement shall contain.
 Statement shall be filed in office of county auditor.
7. Party receiving highest number of votes to be declared elected.
 County auditor to certify under seal of county.
8. Probate judge to canvass returns and certify election of county auditor.
9. Duty of county auditor in election of district officers.
 Auditor of senior county to certify election of such district officer.
 Senior county auditor to transmit statements of district vote to Secretary of Territory.
10. Senior county auditor to give certificate of election to district officer.
 When and how certificate to be authenticated.
11. Duty of auditor in transmitting election returns to Secretary of Territory.
 Canvass of vote by Secretary.

- SEC. 11. Statement by Secretary and Governor's commission or certificate.
12. County auditor to transmit abstract of votes for certain officers to Secretary of Territory.
13. Defect or informality of returns, not sufficient cause for withholding certificate of election.
14. Certificate of post master to be obtained when election returns are transmitted by mail.
15. In case of a tie vote, a special election shall be ordered.

SEC. 1. As soon as the polls are closed, on the afternoon of the day of election, the judges shall open the ballot box and commence counting the votes, and in no case shall the ballot box be removed from the room in which any election may be held, until all the ballots are counted. The counting of ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the inspector or one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which every such person is voted for. Each clerk shall write down each office to be filled and the name of each person voted for for such office, and shall keep the number of votes by tallies as they are read aloud by the inspector or judge. The counting of the votes shall be continued without adjournment until all are counted.

SEC. 2. If two tickets are found folded together, they shall both be rejected, and if more persons are designated on any ticket for any office than are to be elected to such office, such part of the ticket shall not be counted for any of them, but no ticket shall be lost for want of form, if the board of judges can determine to their satisfaction the person voted for and the office intended.

SEC. 3. As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges and inspector. One of said certificates, with poll list and tally paper, oath of inspector, judges and clerks, shall be sealed up by the inspector and endorsed "elec-

tion returns," and be directed or sent by the inspector to the county auditor of the county in which the election is held.

SEC. 4. The said package shall be delivered to the county auditor by one of the judges or clerks of the election, in person, or may be sent by private hand or by mail. If sent by private hand, the person delivering it shall, before the county auditor, take and subscribe an affidavit that the package was delivered to him by one of the judges, (naming him); that it has not been out of his possession since it was received, and has undergone no alteration while in his possession. The affidavit shall be endorsed on the package. If sent by mail, it shall be mailed by one of the judges, and the post master shall make on it an endorsement that he received it from one of the judges, (naming him.) The other of said certificates, with the poll list and tally papers, oath of judges, inspector and clerks, together with the ballots, shall be retained by the inspector and preserved by him at least six months.

SEC. 5. No tally papers, poll list or certificate, returned from any election shall be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions of this act, if the same can be satisfactorily understood.

SEC. 6. On the tenth day after the day of each election, or as soon as he shall have received the returns from each precinct of the county, if he receive them within that time, the county auditor shall proceed to estimate the vote of the county or precinct, a statement of which shall be drawn up and signed by him. The statement shall contain the names of the persons voted for; the office to fill which each person was voted for; the number of votes given at each precinct to each of such persons, and the number of votes given to each in the county; and the same shall be filed, together with the returns from each precinct, in the office of the county auditor.

SEC. 7. The person having the highest number of votes given for each office to be filled by the voters of a single county or of a precinct, shall be declared elected, and the county auditor shall immediately make out and deliver or send to him

a certificate of election signed by said auditor and authenticated by the seal of the county.

SEC. 8. When a county auditor is to be elected, the probate judge shall examine the returns so soon as they are filed, and issue to the person chosen a certificate of election in the form prescribed in the preceding section.

SEC. 9. When there are officers voted for who are to be chosen by the electors of a district composed of two or more counties, it shall be the duty of each of the county auditors of the counties composing such district, immediately after making out the statement specified in the sixth section of this chapter, to extract therefrom so much as relates to the election of such officers, and certify under his hand and the seal of the county that such extract contains a full statement of all the votes given for district officer as returned to him, and without delay transmit the same to the county auditor of the senior of the counties composing such district. The said county auditor shall compare the returns, make up a statement of the vote of the district for such officers, and file the same, together with the returns from the other counties, in like manner as is prescribed in section six of this chapter. He shall also make out and transmit to the Secretary of the Territory such statement of the votes of the district, signed by him officially and authenticated with the seal of the county.

SEC. 10. The county auditor to whom the election returns of a district are made, shall on the twentieth day after the day of election, or so soon as the result is ascertained, if within that time all of such statements are received, make out and deliver or send to each person chosen to any such office, a certificate of election under his hand and the seal of the county.

SEC. 11. When there are other officers voted for who are chosen by the qualified voters of this Territory, it shall be the duty of each county auditor, so soon as the statement of the vote of his county is made out, as required in section six of this chapter, to copy therefrom so much as relates to the vote given for such officer, certify to the correctness thereof under his hand and the seal of the county, and transmit the same to the Secre-

tary of the Territory, endorsing on the package the words "election returns." On the thirtieth day after the day of election, or so soon as the returns shall have been received from all the counties of the Territory, if received within that time, the Secretary of the Territory shall compare and estimate the vote and make out and file in his office a statement thereof, a copy of which shall be transmitted to the Governor. Upon this statement the commission or certificate shall issue.

SEC. 12. That it shall be and is hereby made the duty of the county auditor in each county of this Territory, to immediately after making abstracts of the vote given in his county at any general or special election for members of the Legislature, county, Territorial or district officers, delegate to Congress, to transmit by mail a certified copy of said abstract to the Secretary of the Territory at the seat of government.

SEC. 13. No certificate shall be withheld on account of any defect or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended and who is entitled to such certificate, nor shall any commission be withheld by the Governor on account of any defect or informality of any return made to the office of the Secretary of the Territory.

SEC. 14. Whenever returns are required to be transmitted by one county auditor to another, or by the county auditor to the Secretary of the Territory, it shall be the duty of the county auditor to deliver the same to some post master of the county, at the post office, to be transmitted by mail, taking from such post master, if it can be obtained, a certificate setting forth the time when such returns were deposited in the post office, which certificate the auditor shall file with the returns.

SEC. 15. If at any election to fill any office, two or more persons receive the highest and an equal number of votes, it shall be declared that there is no choice, and a special election to fill such office shall be ordered by the proper officer.

CHAPTER VIII.

CONTESTING ELECTIONS OTHER THAN MEMBERS OF THE LEGISLATURE
OR DELEGATE TO CONGRESS.

- SEC. 1. Any elector in county may contest election of county officer.
Any elector in precinct may contest election of precinct officer.
Causes of contest.
2. When mal-conduct of judges will set aside election.
 3. In contests for mal-conduct of judges, when precincts shall be rejected.
 4. To set aside election on grounds of illegal votes, what must appear.
All illegal votes first to be deducted.
 5. No person but a qualified elector of district, county or precinct competent to contest.
 6. Statement of contest to be filed with county auditor, when.
Requisites of such statement.
 6. Statement to be verified by affidavit.
 7. Sufficiency of allegations of illegal votes.
Notice of names of illegal voters to be delivered three days before trial.
Contestant cannot prove illegal votes not specified in said notice.
 8. Contest shall not be dismissed for want of form.
Cause of contest to be alleged with sufficient certainty to be understood.
 9. County auditor to advise probate judge.
Notice of special term of probate court to try contest.
 10. Clerk of probate court to issue citation.
Citation how served.
 11. Subpœnas to witnesses; attendance may be enforced by attachment.
 12. Procedure and practice in contested elections.
 13. The court to declare the officer elected who has the highest number of votes.
 14. Fees of officers of probate court in such cases.
 15. When costs shall be adjudged against contestant.
 16. When costs shall be in favor of contestant.
 17. Each party liable for the costs by himself created; how collected.
 18. Appeals to district court.
 19. If probate court set aside election, and no appeal taken, office becomes vacant.

SEC. 20. Contested election for probate judge, to be tried by county commissioners.

21. Contested election for prosecuting attorney to be tried by district court.

SEC. 1. Any elector of the proper county may contest the right of any person declared duly elected to an office to be exercised in and for such county; and also any elector of a precinct may contest the right of any person declared duly elected to any office in and for such precinct, for any of the following causes:

1. For mal-conduct on the part of the board of judges, or any member thereof.

2. When the person whose right to office is contested was not, at the time of the election, eligible to such office.

3. When the person whose right is contested shall have been previous to such election convicted of an infamous crime by any court of competent jurisdiction, such conviction not having been reversed nor such person relieved from the legal infamy of such conviction.

4. When the person whose right is contested has given to any elector or inspector, judge or clerk of the election any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election.

5. On account of illegal votes.

SEC. 2. No irregularity or improper conduct in the proceedings of the board of judges, or any one of them, shall be construed to amount to such mal-conduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested, to be declared duly elected when he had not received the highest number of legal votes.

SEC. 3. When any election held for an office exercised in and for a county is contested on account of any mal-conduct on the part of the board of judges of any precinct election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such

precinct or precincts shall change the result as to such office in the remaining vote of the county.

SEC. 4. Nothing in the fifth ground of contest specified in section one of this chapter, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which if taken from him would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

SEC. 5. No person shall be competent to contest any election unless he is a qualified elector of the district, county or precinct, as the case may be, in which the office is to be exercised.

SEC. 6. When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall within ten days after such person shall have been declared elected to such office, file with the county auditor a written statement setting forth specifically:

1. The name of the party contesting such election, and that he is a qualified elector of the district, county or precinct, as the case may be, in which such election was held.

2. The name of the person whose right to the office is contested.

3. The office.

4. The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party, that the matters and things therein contained are true, as he verily believes.

SEC. 7. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state, generally, that illegal votes were cast, which, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from him, reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes, unless the party contesting such election shall deliver to the op-

posite party, at least three days before such trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial, and no testimony shall be received of any illegal votes, except such as are specified in such list.

SEC. 8. No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may be brought for trial for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or cause for which such election is contested.

SEC. 9. Upon such statement being filed, it shall be the duty of the county auditor to inform the judge of probate court, who shall give notice and order a special term of said court, to be held at the court house of the proper county on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election.

SEC. 10. The clerk of said court shall also at the time issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the sheriff or constable and be served upon the party in person, or if he cannot be found, by leaving a copy thereof at the house where he last resided.

SEC. 11. The said clerk shall issue subpoenas for witnesses in such contested election, at the request of either party, which shall be served by the sheriff or constable as other subpoenas, and the probate court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend, if they fail to do so.

SEC. 12. Said court shall meet at the time and place designated, to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling and

setting aside such election, according to the law and right of the case.

SEC. 13. If in any such case it shall appear that another person than the one returned, has the highest number of legal votes, said court shall declare such person duly elected.

SEC. 14. The judge, clerk, sheriff or constable and witnesses, shall receive respectively the same fees from the party against whom judgment is given, as are allowed for similar services in the district court.

SEC. 15. If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs in favor of the party whose election was contested.

SEC. 16. If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested, in favor of the party contesting the same.

SEC. 17. Each party shall be liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner in which similar costs are collected in the district court.

SEC. 18. Either party feeling himself aggrieved by the judgment of said court, may appeal therefrom to the proper district court, as in other cases of appeal thereto.

SEC. 19. Whenever an election shall be annulled and set aside by the judgment of the probate court, when no appeal has been taken thereupon within ten days, such certificate or commission, if any has been issued, shall be thereby rendered void, and the office become vacant.

SEC. 20. In case of any contest in regard to any election to fill the office of probate judge, such contest shall be tried in like manner by the board of county commissioners.

CONTESTING ELECTION OF PROSECUTING ATTORNEY.

SEC. 21. In case of any contest in regard to any election to fill the office of district prosecuting attorney, such contest shall be tried in like manner by the district court.

CHAPTER IX.

CONTESTING ELECTION FOR MEMEBERS OF THE LEGISLATURE.

- SEC. 1. Who may contest election of members of Legislative Assembly.
2. Contestant to file statement with clerk of district court, when. What statement shall contain; to be verified by affidavit.
 3. Clerk to issue commission to two justices of the peace to take depositions.
 4. Notice of contest, &c., to be served upon party whose right contested.
Requisites of, how and when served.
 5. Sheriff to return notice to clerk; fees of sheriff.
 6. Of procuring attendance of witnesses by justices of the peace.
 7. Of the taking of depositions of witnesses, how certified, &c.
 8. Justices may adjourn from day to day.
Return of depositions to clerk.
 9. Clerk may appoint another justice if either fail to serve.
 10. Fees of sheriff and justices of the peace in such cases.
 11. Clerk to forward depositions and proceedings to Secretary of the Territory.
 12. Duty of Secretary in contested elections.
 13. Respective houses to try contested elections.
 14. After notice of contest is given, depositions may be taken by either party.
To be subject to same rules as depositions to be used in district court.
Said depositions to be certified and returned to Secretary of the Territory.
 15. Legislature may issue commissions to take depositions, or may send for and examine witnesses.

SEC. 1. The right of any person declared duly elected to a seat in the council or house of representatives, may be contested by any qualified voter of the county or district to be represented by such councilman or representative.

SEC. 2. The person contesting such election, shall within twenty days after the issue of the certificate of election, file with the clerk of the district court of the district in which the alleged cause or causes of contest originated, a concise statement of the grounds on which he intends to rely, verified by affidavit.

SEC. 3. Immediately on the filing of such statement in the clerk's office, the said clerk shall issue a commission directed to two justices of the peace in the contestant's district, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of such witnesses as the parties to such contest may wish to examine.

SEC. 4. Written notice of such contest, specifying the time and place of taking depositions, and before whom to be taken, and a copy of the statement certified by the clerk of said court, shall be delivered to the person whose election is contested, or if he cannot be found, it shall be left at the house where he last resided, by the sheriff of the county in which such person claims his residence, within ten days after such statement shall have been filed in the clerk's office.

SEC. 5. The sheriff into whose hands such notice and certified copy may come, shall make due service thereof, and shall return to the proper clerk a certified copy of such notice, with the manner and time of service endorsed thereon, for which he shall be entitled to receive from the party contesting such election, the same fees for service and mileage as are allowed in the district court for service of original writs.

SEC. 6. Either of said justices of the peace shall have power at any time to issue subpoenas for witnesses, at the request of either party, to be served by the sheriff as other subpoenas, and such justices when met at the time and place appointed to take such deposition, shall have the same power to issue attachments and assess fines against witnesses, as is given to justices of the peace in the trial of suits instituted before them.

SEC. 7. Said justices of the peace shall meet at the time and place appointed, to take the depositions of witnesses produced by the parties, which shall be reduced to writing by said justices, and sworn to and subscribed by said witnesses respectively, and duly certified by said justices as depositions are in other cases, noting in the caption of each deposition by which party the witness was called.

SEC. 8. Said justices may continue said examination from day to day, if the business shall require it, and when the same is closed, they shall deliver the depositions taken before them, together with their said commissions, to the clerk of the district court by whom the same was issued.

SEC. 9. If at any time either of the said justices shall become unable to proceed in such examination, said clerk may supply the vacancy by designating any other justice of the peace of the district in the place of such justice.

SEC. 10. The sheriff, for the service of such subpœna, and the justice for issuing the same and taking the depositions, shall receive from the party at whose instance such services are performed, the same fees as are allowed them for similar services in other cases.

SEC. 11. It shall be the duty of said clerk to seal up such depositions, together with the original statements of the grounds of such contest, and the copy of the notice served upon the party whose right is contested, and the commission issued to the justices of the peace, and transmit the same, by mail, to the Secretary of the Territory, endorsing thereon the names of the contesting parties, and the branch of the Legislature before which such contest is to be tried.

SEC. 12. It shall be the duty of the Secretary of the Territory to deliver the same, unopened, to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the Legislature next after taking such deposition, and such presiding officer shall immediately give notice to said house that said papers are in his possession.

SEC. 13. Each house of the Legislature is the judge of the qualifications and election of its members, and shall try all contested elections of its members in such manner as it may direct.

SEC. 14. At any time after notice of any contest shall be given, and before the trial of such contested election before the proper branch of the Legislature, it may be lawful for either party to such contest to take depositions to be read on the trial thereof, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on any trial

pending in the district court, and such deposition when thus taken shall be sealed up by the officer taking the same, and directed to the Secretary of the Territory, who shall keep the same, unopened, and deliver them to the presiding officer of the house in which such contest is to be tried, to be disposed of by such officer as the depositions specified in the preceding section of this article.

SEC. 15. Nothing contained in this article shall be so construed as to abridge the right of either branch of the Legislature trying any contested election, from granting commissions to take testimony, or from sending for and examining, before such branch, any witnesses it may desire to hear on such trial.

CHAPTER X.

PENALTY FOR MISCONDUCT AT ELECTIONS AND FOR VIOLATION OF CERTAIN PROVISIONS OF THIS ACT—AND HEREIN OF COMPENSATION OF OFFICERS CONDUCTING ELECTIONS.

- SEC. 1. Threats, menace or force to influence voter, fine.
2. Furnishing a ticket falsely representing names thereon to person who cannot read, fine.
 3. Deceiving an elector and causing him to vote differently from intention, fine.
 4. Fraudulent voting or attempting to vote, fine.
 5. Voting or attempting to vote more than once, fine.
 6. Officer of election inducing elector to vote, fine.
 7. Officer of election attempting to pry into ballot, &c., fine.
Officer of election disclosing a ballot by him illegally ascertained, fine.
 8. Malfeasance or misfeasance of officers named in this act.
 9. Secretary of Territory to notify prosecuting attorney of county auditor failing to return abstracts, &c.
Certificate of Secretary presumptive evidence of such reported failure.
 10. Prosecuting attorney to present parties violating this act.
 11. Special provisions as to mode of election, appointment of officers and precincts may be made by law.
 12. Fees of officers conducting and connected with elections.
 13. Repealing clause.

SEC. 1. If any person shall directly or indirectly, use any threat, menace or force, or any corrupt measure or device, at or previous to any election held pursuant to this act, towards any elector, or hinder or deter him from voting at such election, or shall attempt by any means whatever, to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 2. If any person shall furnish any elector wishing to vote at any election held pursuant to the provisions of this act, who cannot read, with a ticket, such person informing or giving such elector to understand that it contains a name or names, written or printed thereon, different from the name or names which are written or printed thereon, such person shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 3. If any person shall defraud any elector at any such election by deceiving and causing him to vote for a different person for any office than such elector desired or intended to vote for, or shall fraudulently attempt to deceive and cause such elector thus to vote for a different person for any office than he intended and desired to vote for, such person upon conviction thereof shall be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 4. If any person not having the legal qualifications of an elector shall fraudulently vote, or shall fraudulently attempt to vote, at any election, such person, upon conviction thereof, shall be fined in any sum not less than twenty nor more two hundred dollars.

SEC. 5. If any person shall vote more than once at any election, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars.

SEC. 6. If any inspector, judge or clerk of election, while acting as such, shall induce or attempt to induce any elector, either by menace or reward or promise thereof, to vote differently from what such elector shall intend or desire to vote, such

person so offending shall, upon conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 7. If any inspector, judge or clerk of any election, shall, previous to putting the ballot of any elector in the ballot box, attempt to pry into or find out any name or names on such ballot which shall have been handed in by said elector in a folded form, or if any inspector, judge or clerk of any election shall open or suffer the folded ballot of any elector which has been handed in to the board of judges by any elector, with the view to ascertain the name of any person or persons for whom such elector shall have voted at any such election, or if any inspector, judge or clerk of an election, without the consent of the elector, shall disclose the name of any person or persons which such inspector, judge or clerk shall have fraudulently or illegally discovered to have been voted for by such elector at any election, every such inspector, judge or clerk of an election so offending, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars.

SEC. 8. If the Secretary of the Territory or any inspector, judge, board of judges, board of county commissioners, judge of probate, clerk of district court, county auditor, clerk of probate court, or clerk of election, on whom any duty is enjoined by this act, shall be guilty of any willful neglect of such duty, or of any fraudulent or corrupt conduct in the execution of any such duty, he or they so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, to which may be added imprisonment in the county jail not exceeding one year.

SEC. 9. It is hereby made the duty of the Secretary of the Territory, after the expiration of thirty days from and after each election for delegate to Congress, to certify to the proper prosecuting attorneys any and all failures and omissions of the county auditors in their respective districts to comply with the provisions of this act, in returning or certifying the returns or certificates of any such election to the office of the Secretary of the Territory, and every such certificate of the Secretary of the Territory shall be sufficient presumptive evidence of any such

failure or omission herein specified on the part of the said county auditor, in any trial or indictment against him therefor.

SEC. 10. It shall be the duty of the prosecuting attorney of each district to present all violations of the provisions of this act, which may come to his knowledge, to the special consideration of the proper grand jury.

SEC. 11. Special provisions may be made by law prescribing the mode of calling elections, of appointing the officers thereof, and of designating election precincts otherwise than as provided in this act.

SEC. 12. In all general or special Territorial or county elections hereafter legally held in this Territory, there shall be audited and paid to officers of the same, out of the county treasury, in the same manner as other county charges are paid, the following per diem allowance: To the inspector, judges and clerks of an election, three dollars per day; the person carrying the returns to the county auditor shall be entitled to and receive three dollars, and such mileage as the sheriffs are allowed.

SEC. 13. All acts or parts of acts conflicting with the provisions of this act are hereby repealed.

Passed the House of Representatives January 18, 1866.

EDWARD ELDRIDGE,

Speaker of the House of Representatives.

Passed the Council January 19, 1866.

HARVEY K. HINES,

President of the Council.

Approved January 23, 1866.

WILLIAM PICKERING,

Governor of the Territory of Washington.

AN ACT

TO APPORTION THE REPRESENTATION OF WASHINGTON TERRITORY IN
THE LEGISLATIVE ASSEMBLY.

- SEC. 1. Council districts designated.
2. House apportionment fixed.
3. Repealing previous laws.
4. Act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the apportionment of the Legislative Assembly shall be as follows in the council, to-wit:

The county of Walla-walla shall be entitled to elect one councilman, to be elected in 1867.

The counties of Walla-walla and Stevens shall be entitled to elect one joint councilman, to be elected in 1866.

The counties of Clark, Klickitat and Yakima shall be entitled to elect one joint councilman, to be elected in 1868.

The counties of Clarke, Cowlitz, Wahkiakum and Pacific shall be entitled to elect one joint councilman, to be elected in 1868.

The counties of Thurston and Lewis shall be entitled to elect one joint councilman, to be elected in 1868.

The counties of Pierce, Mason and Chehalis shall be entitled to elect one joint councilman, to be elected in 1867.

The counties of King and Kitsap shall be entitled to elect one joint councilman, to be elected in 1866.

The counties of Snohomish, Island and Whatcom shall be entitled to elect one joint councilman, to be elected in 1867.

The counties of Jefferson and Clalm shall be entitled to elect one joint councilman, to be elected in 1866.

SEC. 2. The apportionment of representatives in the house shall be as follows:

The county of Walla-walla shall be entitled to elect five members.

The county of Stevens one.

The county of Clarke three.

The counties of Klickitat and Yakima one.

The counties of Cowlitz and Wahkiakum one.

The county of Pacific one.

The county of Chehalis one.

The county of Mason one.

The county of Lewis one.

The county of Thurston three.

The county of Pierce two.

The county of King two.

The county of Snohomish one.

The county of Kitsap two.

The county of Jefferson two.

The county of Clallam one.

The county of Island one.

The county of Whatcom one.

SEC. 3. All acts or parts of acts inconsistent with this act, be and the same are hereby repealed.

SEC. 4. This act to take effect and be in force from and after its passage.

Passed the House of Representatives January 8, 1866.

EDWARD ELDRIDGE,

Speaker of the House of Representatives.

Passed the Council January 16, 1866.

HARVEY K. HINES,

President of the Council.

Approved January 22, 1866.

WILLIAM PICKERING,

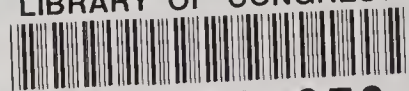
Governor of the Territory of Washington.





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